

**STATEMENT OF ROSS SWIMMER
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AND
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BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS ON
THE 2005 PRESIDENT'S BUDGET REQUEST FOR INDIAN PROGRAMS**

February 25, 2004

It is a pleasure to be here today to discuss with you the fiscal year 2005 budget for Indian programs in the Department of the Interior. President Bush has proposed a \$2.3 billion budget for the Bureau of Indian Affairs (BIA) for Fiscal Year 2005. The Operation of Indian Programs account is funded at \$1.9 billion, an increase of \$36.8 million. The 2005 request for the Office of the Special Trustee for American Indians (OST) is \$322.7million, an increase of \$113.6 million, 54 percent, above the FY 2004 enacted level. Today, we hope to highlight a number of important initiatives included in this budget, and to answer any questions that you might have.

We are at an important crossroad right now with respect to the Department's budget and the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians. These offices are closely involved with the lives of Indian people, in a way different from almost any other agency's involvement with the American people. American Indians in this country look to the BIA for land management, education, law enforcement, tribal government assistance, and economic development programs. The roles BIA and OST play with regard to the management of tribal and individual trust lands are unlike any other the Federal government shares with its citizens, and go to the heart of the United States' trust responsibility to members of Federally recognized tribes.

As you are well aware, the litigation that has been pending since 1996, formerly *Cobell v. Babbitt* and now *Cobell v. Norton*, has had a profound effect on the Department of the Interior, and the budget for Indian programs. The American Indian Trust Reform Act of 1994 and, more recently, the *Cobell* case have shown us the need to examine closely how we manage individual Indian trust land and individual Indian money (IIM) accounts, and to make organizational changes that reflect a better understanding of the trust responsibility owed to these individuals. These changes come at a price however. Since FY 2000, the unified trust budget has increased from \$243.8 million to \$614.4 million. In addition, we are looking at possible historical accounting responsibilities arising out of the *Cobell* case that may cost as much as \$13 billion to fulfill.

It is time now for Congress to examine the benefit that Indian people are receiving for each dollar appropriated for Indian programs. Interior is now spending many millions of dollars a year to keep track of individual interests in Indian trust lands, and to manage, collect, and distribute revenue from them. This does not include the costs associated with the litigation of the *Cobell* case. The costs of managing accounts that sometimes have as little as one cent in them far exceed the benefits that accrue to the beneficiaries of those accounts. In contrast, this issue does not arise in the private trust banking industry because individuals pay for such

services, and obviously refuse to pay fees that are significantly higher than the revenues generated by the trust.

The cost of managing these kinds of individual assets is expected to rise exponentially over the next twenty years as individual Indians die and their interests are further split through inheritance.

While many people believe these rising costs should not be offset by reductions or level funding in other areas of the BIA or Interior budget, the reality is that, to some extent they will be, because the Interior budget is about half of the total funding in the bill developed by the Interior Appropriations Subcommittees. The Subcommittees must address the Interior budget within the allocation they receive, and this allocation is not increasing at the rate of the costs of administering the IIM accounts.

These are issues the Administration and the Congress must address together, particularly given the needs we face throughout the BIA in the areas of education, roads, law enforcement, infrastructure improvements, and economic development. Mr. Chairman, you yourself stated that the “failed policy” of the General Allotment Act “is still with us in the form of horribly fractionated Indian lands and the class action case filed in 1996 that is still ongoing.” You also pointed out that the billions of dollars we might spend on historical accounting might be “better spent on re-constituting the Indian land base and building a forward-looking, state-of-the-art trust management system and providing more dollars to Indian health care and education, which we know are underfunded.”

There are things we must do to solve the overall problem of fractionation. We believe we must aggressively try to consolidate the millions of interests in individual Indian trust lands into a more manageable number so that these lands can be put to their best economic use. Further, funds spent on managing a high number of small accounts could be put to better use. We propose beginning that process with an aggressive nationwide Indian land consolidation program, and meaningful probate reform.

On January 28, 2004, this Committee marked up S. 1721, **THE PROPOSED AMERICAN INDIAN PROBATE REFORM ACT OF 2004. WE ARE STILL REVIEWING THE REPORTED VERSION OF S. 1721. HOWEVER, WE MUST BE CONVINCED THAT THE LEGISLATION WILL TRULY PROVIDE MEANINGFUL PROGRESS BEFORE THE ADMINISTRATION CAN SUPPORT IT.**

The Unified Trust Budget

The 2005 budget includes funding to sustain and expand work begun to reform, re-engineer, and reorganize trust programs so the Department can do a better job fulfilling its fiduciary trust obligations. The focus of these reforms, in large part, is to create greater accountability to Interior’s trust beneficiaries. Fulfilling our trust responsibilities remains one of the Department’s highest priorities, but greatest challenges. The Department is responsible for the management of approximately 100,000 leases for individual Indians and Tribes on a land trust that encompasses approximately 56 million acres. Revenue from leasing, use permits, sale revenues, and interest, totaling approximately \$194 million per year, is collected for approximately 260,000 open individual Indian money accounts, and about \$378 million per year

is collected for approximately 1,400 tribal accounts. In addition, the trust manages approximately \$2.9 billion in tribal funds and \$400 million in individual Indian funds.

The 2005 Unified Trust Budget focuses on:

- **Land Consolidation** – The 2005 budget includes an unprecedented \$75.0 million for a nationwide Indian land consolidation program using contractual arrangements with Tribes or private entities to purchase individual interests in Indian trust land on a willing seller basis that then can be transferred to the Tribe having jurisdiction of the lands. This program will build on the ongoing Indian Land Consolidation program that, as of December 31, 2003 purchased 68,938 individual interests equal to approximately 42,075 acres.
- **Reengineering** -- The Department is now involved in the “To-Be” reengineering phase of the reengineering of trust business processes. In this phase, we are looking at what we must do to transform our current processes into an efficient, consistent, integrated, and fiscally responsible business model that meets the needs of our beneficiaries and addresses our duties as a trustee.

As part of this process, we are looking at business processes that vary from region to region, attempting to standardize these processes, and comparing our current and proposed practices with standard industry practices. We then must integrate the final “To-Be” model into use in OST, BIA, and other Interior agencies. We expect the final “To-Be” model to be completed by May 31, 2004, and its implementation to be initiated during the balance of 2004.

- **IT Infrastructure** -- The 2005 budget includes an increase of \$29.1 million to continue the ground-up rebuilding of the BIA IT infrastructure to support trust as well as non-trust programs. BIA, OST, and the Department’s Solicitor’s Office have been without external e-mail capability and Internet access since the court ordered shutdown in December 2001. Since the shutdown, BIA has revamped its enterprise infrastructure and management practices. The BIA established a state-of-the-art wide-area network operations command center, and a security operations center. We have developed over 40 new IT policies and procedures that comply with the security requirements of OMB Circular A-130 and the Government Information Security Results Act.
- **Continuing Implementation of the Comprehensive Trust Management Plan** through:
 - continuing implementation of trust reorganization so that both the BIA and OST can provide better direct beneficiary services, and
 - funding of the Department’s \$335 million five-year historical accounting plan. The 2005 budget of \$109.4 million for the Office of Historical Trust Accounting includes an increase of \$65.0 million over the enacted 2004

level. This includes \$80.0 million for IIM accounting, and \$29.4 million for tribal accounting. The 2005 level for historical accounting is based on the Department's costs to begin full implementation of its plan after December 31, 2004. P.L. 108-108 provided that the Department is not required to commence or continue historical accounting activities until the earlier of the following has occurred: (1) Congress amends the American Indian Trust Management Reform Act of 1994 to delineate the specific historical accounting obligations of the Department with respect to the Individual Indian Money Trust; or (2) December 31, 2004 .

The 2005 budget for accounting may be revised depending on how the Court of Appeals rules on the District Court's structural injunction order in the *Cobell* litigation or on whether Congressional action is taken. On January 28, 2004, the Court of Appeals issued a stay of the District Court's order pending its hearing of the government's appeal.

Indian Education

One of BIA's most important strategic goals is to provide high quality educational opportunities from early childhood through adulthood, instilling a desire for life-long learning to keep pace with an ever-changing world. Education is the cornerstone of a viable and prosperous future for tribal governments and American Indians. Almost 48,000 students in 23 States attend elementary and secondary schools and dormitories that form the BIA school system. The BIA directly operates one-third of these schools. The other two-thirds are operated under contracts or grants to Tribes or other tribal organizations. In addition, the BIA budget also supports higher education in Indian country.

The 2005 school operations request is \$522.4 million. This funding will help to maintain the President's commitment to improve student achievement at BIA schools. The request includes an increase of \$500,000 to expand the highly successful FOCUS program to five additional schools.

The FOCUS program provides targeted assistance to under-achieving schools to help them raise their level of instruction and improve student achievement. Through funding like this, at-risk students and their parents are provided innovative programs designed to make education an important part of their daily lives. One school has raised its academic scores by over 20 percent since it has been a part of the program.

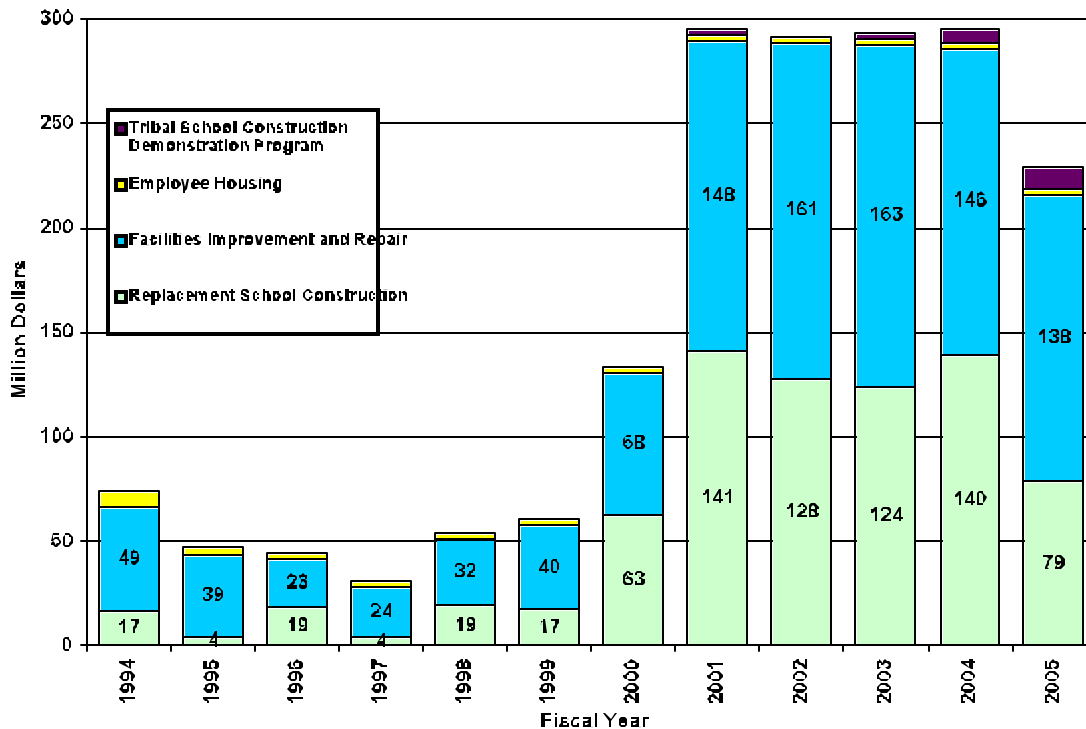
Funding for post-secondary education totals \$43.4 million in the 2005 budget. This includes an increase to support two tribally controlled colleges that have recently met statutory requirements for BIA support – Tohono O'odham Community College in Arizona and the Saginaw Chippewa Tribal College in Michigan.

The President's first three budgets, FYs 2002, 2003, and 2004, included more than \$881 million for Indian school construction, providing an increasing number of students with a school environment that is safe, healthy, and conducive to educational achievement. With funding provided through FY 2004, the facilities condition index scale for BIA schools will reach 0.124, a significant reduction from 0.266 in 2001. A score of 0.100 is the threshold for fair/good condition. The funding included for 2005 will further reduce that score to .113, with 60 percent of schools having an index of 0.100 or less.

The 2005 budget includes \$68.5 million to replace buildings at the remaining five schools on the 2003 priority-ranking for education facilities construction. The budget also includes \$9.9 million for the tribal school, construction demonstration project, which provides incentives for Tribes to match Federal funds to build replacement schools. The education facilities improvement and repair program is funded at \$137.5 million, with funding for annual maintenance increased by \$21.0 million to \$71 million to prevent growth in the deferred maintenance backlog.

As the following chart shows, the 2005 budget does include a decrease in tribal school construction funding. This Administration has made an extraordinary commitment to this area as compared to funding levels in the past. For FY 2005, the program needs to focus more on the schools that have already been funded for construction and develop a new priority list for replacement schools. Between 2001 and 2004, funding was appropriated for 25 replacement schools. Of these, 21 are in the planning and design process or under construction. The other four have been completed and are operating. Three are expected to be completed in 2004.

History of Tribal School Construction Funding FY 1994 through FY 2005



Enhancing Consultation

The Department recognizes the importance of consultation as part of its government-to-government relationship with the 562 federally recognized Indian Tribes. The 2005 budget includes a total of \$1.1 million for a new Office of Consultation within the Office of the Assistant Secretary - Indian Affairs. This new office will provide a stable, continuous point of contact for the Tribes and maximize both financial and manpower resources to fulfill responsibilities to consult with Tribes on the myriad of issues facing the BIA.

The BIA is responsible for ensuring that consultation with tribes occurs on issues that affect Indian Country. The proposed new Office of Consultation will have dedicated staff and a budget to ensure continuous, stable consultation with Tribes throughout the nation in support of the Secretary's priorities. The staff will be responsible for day-to-day and quarterly reporting on the status of all consultation issues, as well as a formal annual report on the outcome of consultation issues. Funds will also cover costs of tribal consultation meetings, including the cost of meeting rooms and tribal leaders' travel expenses. Having a coordinated focal point for Tribal consultation will provide the Secretary and the BIA with an excellent source of access to and from Tribal leaders on issues of concern. The 2005 request will be used for the initial start-up of the new office.

A Better BIA

In addition to the trust reform reorganization discussed above, a number of programs are included in the 2005 budget that will make the BIA a stronger, more effective agency for Indian people.

Included in the budget for the first time is a pilot program that will not only help Indian students with education costs, but will also help to build a strong future for the BIA. The 2005 request includes \$250,000 for a student loan repayment program specifically targeted to students who agree to a term of employment on a reservation or within the BIA. We are excited at the prospect of attracting the brightest young Indian minds to service within the BIA.

We are not just interested in attracting talent, but in retaining it as well. Our goal is to create opportunities and an atmosphere that results in the retention of the best and the brightest. In support of the President's Management Agenda and the Department of the Interior's Human Capital Plan, a total of \$2.0 million is included in the 2005 budget to establish a BIA Workforce Improvement and Retention Program. The vision for this program is to provide an integrated career planning and development program for the evolving BIA workforce.

The program will include, among other things –

- the development of an orientation program for new employees,
- basic skills training in computers, business writing, and briefing presentations,
- E-learning (web-based training),
- post secondary and graduate degree support for employees,
- development of a Trust Management Intern Program with an anticipated ten interns annually,
- a Management Development program, and a
- Senior Executive Service development.

Public Safety and Justice in Indian Country

The Department of Justice and the BIA work in partnership to improve public safety and justice in Indian country. A joint Interior-Justice initiative has provided over \$128 million in funding to construct 20 new detention centers serving Indian populations. The 2005 budget includes an increase of \$7.8 million to provide startup operations at eight BIA detention centers that will be completed in 2005. These new centers will mark the completion of 18 new detention centers between 2002 and 2005. These new centers will alleviate current problems such as overcrowding and the mixing of juveniles with adult detainees.

The 2005 request also includes an increase of \$1.4 million for law enforcement on the Tohono O'odham Reservation in southern Arizona. This increase will allow reservation

law enforcement forces to better protect lives, resources, and property on the border areas and other high-risk and violent crime areas on the reservation.

Resource Management

The BIA manages 56 million acres of trust lands and the natural resources they contain on behalf of Tribes and individual Indians. It is estimated that approximately 15 million acres of undeveloped energy and mineral resources may exist on these lands.

The 2005 budget includes an increase of \$1.0 million to improve management of Indian forests, which cover 17 million acres located on 275 reservations in 26 States. The request will increase the number of reservations covered by forest management plans, a key component for comprehensive management of a reservation's resources. These plans are designed to optimize benefits, including sustainable increases in revenue, as well as to address best management practices on reservation forests. Currently, only 44 percent of forested acres on reservations are covered by forest management plans.

Indian Self-Determination

The 2005 budget continues the Federal government's commitment to support Indian self-determination and strengthen the government-to-government relationship it has with Indian Nations. Tribes depend on the Tribal Priority Allocations (TPA) budget activity for basic necessities and programs critical to improving the quality of life and economic potential on reservations. Tribal Priority Allocations give Tribes the flexibility to prioritize funds among most TPA programs according to their unique needs and circumstances. The 2005 request funds the TPA activity at \$775.6 million, which comprises 40 percent of the 2005 proposed BIA operating budget.

This includes \$1.0 million for the Indian self-determination fund to provide 100 percent of indirect costs to first-time and expanded contracts. In addition, the budget includes \$560,000 for six newly Federally acknowledged Tribes to help them establish day-to-day tribal government operations and provide program services to members.

Economic Development

Working closely with federally recognized Tribes, the Department promotes economic development and an improved quality of life for 1.5 million American Indians in communities across the country.

The 2005 budget includes an increase of \$1 million to help Tribes develop uniform business codes. A codified standard will enable businesses bringing jobs to the reservations to understand what is expected of them throughout Indian country, and should result in an enhanced ability to attract quality jobs to the reservations. This in

turn, will help address unemployment among Indian people, one of the biggest challenges Indian communities face today.

Resolving Land and Water Claims

The 2005 Interior budget includes \$34.8 million for payment of authorized Indian land and water claim settlements in Oklahoma, Nevada, Colorado, New Mexico, and New York. These settlements resolve longstanding claims to water and lands by Indian Tribes. They are the result of negotiations among the Tribes, the Federal government, and other interested parties. While the specific provisions of each settlement differ, most contain multi-year funding commitments. Once an agreement has been reached, the affected Tribe depends on appropriated funds to implement the agreement, which often involves beginning new water development projects or other economic development initiatives.

The 2005 request for settlements reflects a net decrease of \$25.1 million from the 2004 funding level primarily because the Federal commitment was completed in 2004 for the Santo Domingo and Ute Indian settlements. The BIA budget request includes funding for two new settlements: \$14.0 million for Zuni Pueblo water claims and \$1.75 million for Seneca Nation land claims at Cuba Lake in New York. The total settlement of \$19.3 million for the Zuni water claims settlement will be paid over two years. The settlement for Cuba Lake land claims by the Seneca Nation is a one-time payment.

The budget includes \$10.0 million for the second of four payments for the Cherokee, Choctaw, and Chickasaw Settlement in Oklahoma, and \$8.0 million for the Colorado Ute/Animas La Plata settlement. Funding of \$52.0 million for construction activities associated with that settlement is included in the Bureau of Reclamation budget. In addition, the Quinault settlement is proposed to be funded in the Fish and Wildlife budget, rather than the BIA budget.

Summary

This budget request provides a substantial increase in funding for Indian land consolidation aimed at stemming the growing problem of Indian land fractionation. It also places emphasis on education, public safety, justice, economic development and self-determination, evidencing this Administration's commitment to improving the lives of Indian people. We would be happy to answer any questions you might have at this time.